



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 5, 1993

Mr. William J. Delmore, III
General Counsel
Office of the District Attorney
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR93-421

Dear Mr. Delmore:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 20373.

The Harris County District Attorney's Office (the "district attorney") has received a request for access to a copy of investigative or offense reports concerning the offense of welfare fraud prosecuted in Cause No. 627,294 in the 209th District Court, Harris County, Texas. You have submitted to us for review the requested information. You object to its release under sections 3(a)(1), 3(a)(3), and 3(a)(8) of the Open Records Act.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You claim that the requested information is excepted by section 3(a)(1) because it constitutes work product and is subject to the "law enforcement privilege" set forth in *Hobson v. Moore*, 734 S.W.2d 340 (Tex. 1987). This argument was rejected in Open Records Letter OR93-213 (1993). As we stated in that ruling, section 3(a)(1) does not encompass work product or discovery privileges. See also Open Records Decision No. 575 (1990). Such protection may exist under section 3(a)(3), if the situation meets the section 3(a)(3) requirements.¹ You advise us that the defendant in this case entered a plea of guilty on July 20, 1992, and was assessed a punishment of ten years' confinement, probated for a period of ten years. You have provided us with no information, however, demonstrating that the defendant has to date given notice of appeal or filed any application for habeas corpus relief. You do not indicate that litigation in this matter is pending or reasonably

¹Please note that section 14(f) of the act, added by the 71st Legislature in 1989, chapter 1248, section 18 provides in part that "exceptions from disclosure under this Act do not create new privileges from discovery." Accordingly, the *Hobson* court's apparent use of section 3(a)(8) as a basis for the "law enforcement privilege" is no longer valid.

anticipated. We thus have no basis on which to conclude that the requested information may be withheld from required public disclosure under either the work product doctrine or section 3(a)(3) of the Open Records Act. *See* Open Records Decision Nos. 551 (1990) (section 3(a)(3) applies to information relating to pending or reasonably anticipated litigation); 518 (1988) (section 3(e) does not relieve governmental body from demonstrating general applicability of section 3(a)(3)).

With respect to section 3(a)(8), you argue that this exception should apply to all material in a closed law enforcement file. You also dispute our use of a standard that permits you to withhold from a closed file only that information the release of which would "unduly interfere with law enforcement." In Open Records Letter OR93-213, we reviewed the same argument and rejected it. Accordingly, we will apply the existing standard of undue interference with law enforcement. Since you do not claim that any undue interference with law enforcement will be caused by releasing the requested information, you have waived this argument. Accordingly, except as noted above, the requested information may not be withheld from required public disclosure under section 3(a)(8) of the Open Records Act and must be released in its entirety.

Because prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SLG/GCK/jmn

Ref.: ID# 20373

Enclosures: submitted documents

cc: Mr. Joel Chavez
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(w/o enclosures)